



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 6, 1996

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR96-2042

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101857.

The City of McAllen (the "city") received a request for two reports. As the request is stamped "RECEIVED AUG 09 1996", we assume the city received this request on August 9, 1996. You state that the city has released to the requestor the front page offense report information. In a letter dated August 22, 1996, you asked this office for a ruling that the city may withhold portions of the requested information based on Government Code section 552.108.

Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. *The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the request.* (Emphasis added).

The city failed to seek our decision within the ten-day period mandated by section 552.301(a). Because the city did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The city raises Government Code section 552.108, which generally protects a governmental body's law enforcement interests. When an exception to disclosure that is designed to protect the interests of a third party is applicable, the presumption of openness may be overcome. *See* Open Records Decision No. 552. (1990). The city has not raised any specific compelling reasons to overcome the presumption that the information is public. Accordingly, the city may not withhold the information at issue based on section 552.108.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 101857

Enclosures: Submitted documents

cc: Ms. Elia Benavidez
705 North 20th
McAllen, Texas 78501
(w/o enclosures)